

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

In Re:

DAVID WALLACE BAYS,  
Debtor.

KELLY CASE,

Appellant,

v.

ANTHONY GRABICKI, Chapter 7  
Trustee, et al.,

Appellees.

No. CV-09-0392-LRS

**ORDER OF DISMISSAL**

The United States Bankruptcy Appellate Panel (BAP) of the Ninth Circuit transferred this appeal (EW-09-1318) to this court by an order dated December 23, 2009. In that order, the BAP indicated it was forwarding to this court a pending motion to dismiss the appeal on the basis of untimeliness. The BAP observed that the notice of appeal was filed on October 5, 2009, twenty-seven days after the entry of the order on appeal, and therefore appeared to be untimely pursuant to Fed. R. Bankr. P. 8002(a).

Based on its review of the Motion To Dismiss and supporting memorandum filed by Appellee Estate of Joseph Esposito (BAP Docket No. 009133809 found at Ct. Rec. 4 in the captioned matter), joined in by Appellee David Bays (BAP Docket No. 009134746 found at Ct. Rec. 4 in the captioned matter), said motion is

**ORDER OF DISMISSAL-**

1 **GRANTED** and the appeal is hereby **DISMISSED with prejudice**. The court  
2 notes the motion was filed on November 5, 2009 and the BAP docket reflects that  
3 a response was never filed by Appellant.

4 **IT IS SO ORDERED.** The District Court Executive is directed to enter  
5 this order and provide copies of it to the pro se appellant, to counsel of record for  
6 the appellees, and to the Clerk of the Court for United States Bankruptcy Court for  
7 the Eastern District of Washington in reference to Cause Nos. 01-05127-JAR7 and  
8 A03-00237-JAR. The District Court Executive shall close this file

9 **DATED** this 31st day of December, 2009.

10 *s/Lonny R. Suko*

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12 LONNY R. SUKO  
13 Chief United States District Judge  
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